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# HOUSE BILL No. 1659

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 24-4.7-3-6; IC 24-4.8.

**Synopsis:** Fax sales solicitations. Requires the consumer protection division of the attorney general's office to establish a list containing the telephone numbers of persons who do not wish to receive sales solicitations by fax. Provides that a person may not send or cause to be sent a fax sales solicitation to a telephone number if that telephone number appears in the most current quarterly listing published by the division. Provides civil remedies for violations.

**Effective:** July 1, 2005.

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January 19, 2005, read first time and referred to Committee on Technology, Research and Development.

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Introduced

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

## HOUSE BILL No. 1659

A BILL FOR AN ACT to amend the Indiana Code concerning consumer protection.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 24-4.7-3-6 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 6. (a) The consumer  
3 protection division telephone solicitation fund is established for the  
4 purpose of the administration of:

5 (1) this article; and

6 (2) **IC 24-4.8.**

7 **The fund** shall be used exclusively for this purpose.

8 (b) The division shall administer the fund.

9 (c) The division shall deposit all revenue received under this article  
10 in the fund.

11 (d) Money in the fund is continuously appropriated to the division  
12 for the administration of:

13 (1) this article; **and**

14 (2) **IC 24-4.8.**

15 (e) Money in the fund at the end of a state fiscal year does not revert  
16 to the state general fund. However, if the amount of money in the fund  
17 at the end of a particular state fiscal year exceeds two hundred

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thousand dollars (\$200,000), the treasurer of state shall transfer the excess from the fund to the state general fund.

SECTION 2. IC 24-4.8 IS ADDED TO THE INDIANA CODE AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]:

#### **ARTICLE 4.8. FACSIMILE SALES SOLICITATION**

##### **Chapter 1. General Provisions**

**Sec. 1. This article applies after December 31, 2005.**

**Sec. 2. This article does not apply to a facsimile transmission sent to a telephone subscriber by either of the following:**

(1) A person who has an established business relationship with the telephone subscriber.

(2) A person who sends a facsimile transmission on behalf of a charitable organization that is exempt from federal income taxation under Section 501 of the Internal Revenue Code, but only if all the following apply:

(A) The facsimile transmission is sent by a volunteer or an employee of the charitable organization.

(B) The facsimile transmission includes the following information:

(i) The solicitor's true first and last name.

(ii) The name, address, and telephone number of the charitable organization.

**Sec. 3. This article does not relieve a person from complying with any other applicable law.**

##### **Chapter 2. Definitions**

**Sec. 1. The definitions in this chapter apply throughout this article.**

**Sec. 2. "Division" refers to the consumer protection division of the office of the attorney general.**

**Sec. 3. "Doing business in Indiana" means sending facsimile sales solicitations to telephone numbers located in Indiana, whether the facsimile transmissions are made from a location in Indiana or outside Indiana.**

**Sec. 4. "Established business relationship" means a prior or existing relationship, not terminated by either party, formed:**

(1) by a voluntary two (2) way communication between a person and a telephone subscriber;

(2) with or without an exchange of consideration; and

(3) on the basis of the telephone subscriber's:

(A) purchase or transaction with the person within the eighteen (18) months immediately preceding the date of the

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1 facsimile sales solicitation; or

2 (B) inquiry or application regarding products or services  
3 offered by the person within the three (3) months  
4 immediately preceding the date of the facsimile sales  
5 solicitation.

6 Sec. 5. "Facsimile machine" means equipment that has the  
7 capacity to transcribe text or images, or both, from:

8 (1) paper into an electronic signal and to transmit that signal  
9 over a regular telephone line; or

10 (2) an electronic signal received over a regular telephone line  
11 onto paper.

12 Sec. 6. "Facsimile sales solicitation" means transmission of an  
13 unsolicited advertisement by facsimile machine.

14 Sec. 7. "Fund" refers to the consumer protection division  
15 telephone solicitation fund established by IC 24-4.7-3-6.

16 Sec. 8. "Listing" refers to the listing published by the division  
17 under IC 24-4.8-3 that lists the telephone numbers of telephone  
18 subscribers who do not wish to receive facsimile sales solicitations.

19 Sec. 9. "Unsolicited advertisement" means any material  
20 advertising the commercial availability or quality of any property,  
21 goods, or services sent to a telephone subscriber without the  
22 telephone subscriber's prior express invitation or permission.

### 23 Chapter 3. Duties of the Division

24 Sec. 1. (a) The division shall establish, maintain, and publish a  
25 quarterly listing of telephone numbers of Indiana telephone  
26 subscribers who request not to receive facsimile sales solicitations.

27 (b) The telephone number of a telephone subscriber shall be  
28 placed on the listing if the telephone subscriber, according to a  
29 procedure established by the division, requests that the telephone  
30 subscriber's telephone number be added to the listing.

31 (c) The listing shall be updated upon receipt of a request from  
32 a telephone subscriber.

33 (d) A person may obtain a copy of the listing upon request as  
34 provided in this section.

35 (e) The division shall establish a fee to be paid for obtaining a  
36 copy of the listing. The fee established under this subsection may  
37 not exceed the amount necessary to cover the cost of administering  
38 and enforcing this article.

39 (f) The division shall establish a fee to be paid for registering a  
40 telephone number on the listing.

41 Sec. 2. (a) The division may contract with an agent to perform  
42 the division's duties under section 1 of this chapter.

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(b) A contract under this section must require the agent to provide the listing, whether in:

- (1) a printed hard copy format; or
- (2) any other format in which the listing is offered.

(c) If the division enters into a contract under this section, the division must retain the ultimate authority for the following:

- (1) Approval of the procedures for establishment, maintenance, and publication of the listing.
- (2) Establishing fees required by section 1 of this chapter.

Sec. 3. The division shall investigate complaints received concerning violations of this article.

Sec. 4. The division shall notify Indiana citizens of the rights and duties created by this article.

Sec. 5. (a) The division shall report to the legislative council each year about the following:

- (1) The total amount of fees deposited in the fund during the most recent state fiscal year.
- (2) The expenses incurred by the division in maintaining and promoting the listing during the most recent state fiscal year.
- (3) The projected budget required by the division to administer this article during the current state fiscal year.
- (4) Any other expenses incurred by the division in administering this article during the most recent state fiscal year.
- (5) The total number of persons on the listing at the end of the most recent state fiscal year.
- (6) The number of new persons added to the listing during the most recent state fiscal year.
- (7) The number of persons removed from the listing for any reason during the most recent state fiscal year.
- (8) Any recommendations the division has.

(b) The division shall issue the report before November 1 of each year in an electronic format under IC 5-14-6.

(c) The report issued under this section for the state fiscal year ending June 30, 2006, must set forth, in addition to the information required under subsection (a), the expenses incurred by the division in establishing the listing.

Sec. 6. The division shall deposit all revenue received under this article in the fund.

Sec. 7. The division may adopt rules under IC 4-22-2 to implement this article.

Chapter 4. Facsimile Sales Solicitations

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1        **Sec. 1. A person doing business in Indiana may not send or**  
 2        **cause to be sent a facsimile sales solicitation to a telephone number**  
 3        **if that telephone number appears in the most current quarterly**  
 4        **listing published by the division under IC 24-4.8-3.**

5        **Sec. 2. A person who violates section 1 of this chapter commits**  
 6        **a deceptive act that is actionable by the attorney general under this**  
 7        **chapter.**

8        **Sec. 3. In an action under this chapter, the attorney general may**  
 9        **obtain any or all of the following:**

10        **(1) An injunction to enjoin future violations of section 1 of this**  
 11        **chapter.**

12        **(2) A civil penalty of not more than the following:**

13            **(A) Ten thousand dollars (\$10,000) for the first violation of**  
 14            **section 1 of this chapter.**

15            **(B) Twenty-five thousand (\$25,000) dollars for each**  
 16            **violation after the first violation.**

17        **For purposes of this subdivision, each facsimile transmission**  
 18        **sent in violation of section 1 of this chapter is considered a**  
 19        **separate violation.**

20        **(3) The attorney general's reasonable costs in:**

21            **(A) the investigation of the deceptive act; and**

22            **(B) maintaining the action.**

23        **(4) Reasonable attorney's fees.**

24        **(5) Costs of the action.**

25        **Sec. 4. In an action under this chapter, the court may void or**  
 26        **limit the application of contracts or clauses resulting from**  
 27        **deceptive acts and order restitution to be paid to an aggrieved**  
 28        **telephone subscriber.**

29        **Sec. 5. An action brought under this chapter may not be brought**  
 30        **more than two (2) years after the occurrence of the deceptive act.**

31        **Sec. 6. An action under this chapter may be brought in the**  
 32        **circuit or superior court of Marion County.**

33        **Sec. 7. The attorney general may employ counsel to represent**  
 34        **the state in an action under this chapter.**

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